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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,438	12/08/2003	Martin Schnabel	CM2713Q	2354
27752 7590 05/07/2009 THE PROCTER & GAMBLE COMPANY Global Legal Department - IP Sycamore Building - 4th Floor 299 East Sixth Street CINCINNATI, OH 45202				
EXAMINER				
MAR CETICH, ADAM M				
ART UNIT		PAPER NUMBER		
3761				
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05/07/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/730,438

Applicant(s)

SCHNABEL ET AL.

Examiner

Adam Marcetich

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/ICE)
Paper No(s)/Mail Date 27 Apr 2009
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04 March 2009 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schleinz; Robert J. et al. (US 5458590) in view of Burazin, Mark A. et al. (US 20020112832).

5. Regarding claims 1, 10 and 11, Schleinz discloses a disposable article (col. 6, lines 28-39);

comprising a liquid pervious topsheet, a liquid impervious backsheet and an absorbent core positioned between said topsheet and said backsheet (col. 6, lines 44-57, Fig. 2, topsheet 22, backsheet 6 and absorbent composite 20);

wherein said backsheet comprises at least one polymeric film (col. 6, lines 44-52, Fig. 2, liquid impervious film 14); and

at least one nonwoven web formed of fibers (col. 6, lines 44-52, Fig. 2, nonwoven polyolefin fibrous web 8);

wherein said polymeric film and said nonwoven web each have two major surfaces (Fig. 2, film 14 and web 8 each having two major surfaces);

said polymeric film comprises a polymeric film material (col. 6, lines 44-52, Fig. 2, film 14); and

said nonwoven web fibers comprise a polymeric nonwoven web material (col. 7, lines 44-57, fibers of fibrous web);

wherein at least one of said polymeric film material or said polymeric nonwoven web material is color-pigmented by one or more pigments mixed therein prior to formation of said polymeric film or said nonwoven web (col. 7, lines 58-64, especially lines 61-64, pigments incorporated into fibers); and

wherein at least one of said polymeric film or said nonwoven web has visually discernible printed ornamental designs (col. 6, lines 28-39, printed designs);

said printed ornamental designs being provided by printing a pigmented ink onto at least one of said major surfaces of at least one of said polymeric film or said nonwoven web (col. 7, lines 3-18, especially lines 14-18, printing on nonwoven fibrous web); and

said polymeric film being joined in an overlaying region across at least part of one of its major surfaces to at least part of an adjacent major surface of said nonwoven web to form said backsheet 6, lines 44-52, web 8 joined to film 14).

Schleinz discloses the invention substantially as claimed, see above. Schleinz analyzes the crockfastness rating, or color-retaining ability of a printed substrate using CIELAB values (cols. 8-9, lines 62-12, especially lines 2-4). However, Schleinz instead reports these values as CR value and lacks specific L* a* b* values as claimed [claim 1]. Burazin discloses a paper product printed with an obscuring masking pattern (¶ [0011]), and analyzes the colors according to a HunterLab Color Scale (¶ [0029]). Burazin discloses L* a* b* values of:

an L value for darkness/lightness-appearance from 10 to 75 and 10 to 65 (p. 4, table, L values between 40.49 - 61.8);

an "a" value for red/green- appearance from about -50.0 to about +50.0 and about -35.0 to about +25.0 (p. 4, table, a values between 6.3 - 15.47); and

a "b" value for yellow/blue- appearance from about -50.0 to about +50.0 and about -35.0 to about +25.0 (p. 4, table, b values between 11.93 - 14.75).

Here, Burazin discloses $L^* a^* b^*$ values that overlap the ranges of claims 1, 10 and 11. Regarding the limitation of $L^* a^* b^*$ values printed in areas outside of printed ornamental designs, Burazin prints this color as a background, or masking pattern. In other words, Burazin applies this coloration over an article to mask and obscure (¶ [0021], [0022], entire sheet printed with masking pattern) while matching skin colors according to averages of ethnic groups (¶ [0051], [0052], p. 4, table of $L^* a^* b^*$ values). Therefore, Examiner interprets the printing of Burazin as areas outside of ornamental designs, since Burazin prints a masking design over the entire surface of an article. Additionally, Burazin suggests printing additional designs (¶ [0056], printing with multiple inks and creating multiplicity of apparent colors).

One would be motivated to modify Schleinz with the $L^* a^* b^*$ values as taught by Burazin to mask an absorbent product since both Schleinz and Burazin distract a user with colored printing. Masking the diaper of Schleinz with the background printing of Burazin would further distract a user, by blending in with the wearer's skin. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Schleinz as discussed with the specific $L^* a^* b^*$ values as taught by Burazin in order to mask an absorbent article.

6. Regarding claim 2, Schleinz discloses the invention substantially as claimed, see above. However, Schleinz is silent regarding opacity values as claimed [claim 2]. Burazin discloses opacity values between 55-100% (¶ [0019], opacity less than about 70%, overlapping claimed range). Burazin also increases the perceived opacity by

printing a background pattern (§ [0020]). Burazin provides the advantage of a masking effect, as discussed for claim 1 above.

7. Regarding claim 3, Schleinz discloses an absorbent article wherein one of said two major surfaces of said polymeric film and said nonwoven web is a garment facing surface (col. 6, lines 52-57, Fig. 2, outer visible surface 10); and
8. said discernible ornamental designs are provided by printing on at least one of said garment facing surfaces of said polymeric film or said nonwoven web (col. 7, lines 3-18, especially lines 14-18, printing on outer surface of nonwoven web).
9. Regarding claim 4, Schleinz discloses an absorbent article wherein said backsheet comprises a garment facing layer and a body facing layer (col. 6, lines 44-52, Fig. 2, backsheet 6 having web 8 and film 14); and
10. said nonwoven web is comprised by said garment facing layer (Fig. 2, web 8); and
11. said polymeric film is comprised by said body facing layer (Fig. 2, film 14).
12. Regarding claim 7, Schleinz in view of Burazin discloses the invention as substantially claimed, see above. However, Schleinz in view of Burazin is silent regarding a distance between a rear end edge and a rear core end edge being about 40 mm as claimed [claim 7]. The property of distance between edges is interpreted as a result-effective variable, subject to experimentation and testing. A result-effective variable is a parameter which achieves a recognized result. These results are obtained by the determination of optimum or workable ranges of said variable through routine experimentation. The property of distance between edges achieves good fit for a baby

through routine experimentation. For example, diapers are provided in sizes suitable for fitting infants of different sizes. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the distance between edges in order to fit infants of an average size. See MPEP 2144.05(II)(A,B). Also see in re Boesch and Slaney, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

13. Claims 5 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schleinz; Robert J. et al. (US 5458590) in view of Burazin, Mark A. et al. (US 20020112832), further in view of McCormack; Ann Louise et al. (US 6719742).

14. Regarding claims 5 and 6, Schleinz in view of Burazin discloses the invention substantially as claimed, see above. However, Schleinz in view of Burazin is silent to the specific percentage of the major surfaces covered with ornamental designs as claimed [claims 5 and 6]. The property of covered area percentage is interpreted as a result-effective variable, subject to experimentation and testing. A result-effective variable is a parameter which achieves a recognized result. These results are obtained by the determination of optimum or workable ranges of said variable through routine experimentation. The property of covered area percentage achieves masking of waste materials through routine experimentation.

For example, McCormack discloses a personal care product including diapers (col. 3, lines 17-20) and method of printing an absorbent article with an embossed design to conceal waste materials (col. 7, lines 30-37, "...employing colors that in effect neutralize the colors within the interior of the article..."). In other words, McCormack

selects a coverage percentage is based on the ability of concealing waste materials as seen from the outside of an absorbent article. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to adjust the covered area percentage in order to mask a soiled absorbent article. See MPEP 2144.05(II)(A,B). Also see in re Boesch and Slaney, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

15. Claims 8 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schleinz; Robert J. et al. (US 5458590) in view of Burazin, Mark A. et al. (US 20020112832), further in view of McFarland et al. (US 6096412).

16. Regarding claims 8 and 9, Schleinz in view of Burazin discloses the article as discussed above for claim 1. However, Schleinz in view of Burazin lacks a half-toning printing process as claimed [claims 8 and 9].

McFarland discloses a process of printing absorbent articles with a half-toning printing process (column 1, lines 14-24 and column 17, lines 52-60). Examiner notes that the process of halftone printing necessarily involves printing with an opaque ink (online encyclopedia, p. 1, paragraph 3), which is covered by dots to produce the effect of an additional color (online encyclopedia, p. 1, paragraph 2).

A halftone printing process creates the effect of additional colors for a user (McFarland column 17, lines 52-60). The practice of printing within an area of a nonwoven web or major surface as claimed falls within the scope of obviousness, as required to print graphics on different areas of a diaper. McFarland provides the advantage of enhanced resolution, in addition to reducing the number of differently

colored inks to create the impression of multiple colors (col. 18, lines 55-67, especially lines 55-58). Burazin suggests using known techniques to print multiple colors (¶ [0055], offset and lithographic printing; [0056], printing with multiple inks to create multiplicity of apparent colors). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the invention of Schleinz in view of Burazin as discussed with the half-toning process as taught by McFarland in order to enhance graphic resolution and use fewer inks.

Response to Arguments

17. Applicant's arguments, see p. 5-10 filed 04 March 2009 with respect to the rejection(s) of claim(s) 1-11 under 35 USC § 103 over McCormack, Polansky and McFarland have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made under 35 USC § 103 over Schleinz, Burazin, McCormack and McFarland.

18. Applicant contends that McCormack lacks L*a*b* values for a backsheet, since McCormack discloses L* a* b* values for a film alone and not a backsheet as claimed. Examiner notes that Schleinz teaches measuring L* a* b* values for a backsheet comprising a film and nonwoven fibrous web, as part of a crockfastness test. Burazin teaches L* a* b* values preferred for masking an absorbent article based on a user's skin color.

19. Applicant suggests that McCormack teaches away from a composite backsheet having values within the claimed range, since McCormack desires that the colored film layer component have an L* value not less than about 85. Examiner notes that Burazin teaches an L* value overlapping the claimed range, to match a skin tones of common ethnic groups, and mask an absorbent article. Here, Burazin calls for lower L* values corresponding to skin tones.

20. Applicant notes that the cited references lack a backsheet formed from both a polymeric film and nonwoven web formed of fibers, since the layers of McCormack lack fibers. Examiner notes that Schleinz teaches a backsheet formed from a film and fibrous web in the new grounds of rejection.

Conclusion

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- | | |
|----------------------------------|------------|
| ◆ Nissing; Nicholas James et al. | US 6477948 |
| ◆ Burazin; Mark A. et al. | US 6368667 |
| ◆ Bevins; Errette et al. | US 6497691 |

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Adam Marcetich whose telephone number is 571-272-2590. The examiner can normally be reached on 8:00am to 4:00pm Monday through Friday.

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23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Adam Marcetich/
Examiner, Art Unit 3761

/Leslie R. Deak/
Primary Examiner, Art Unit 3761
4 May 2009